

SENATE BILL 475

M1

(0lr2640)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senator Stone**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Operating a Vessel While Under the Influence of or Impaired by Alcohol or**
3 **Drugs – ~~Compulsory~~ Testing**

4 FOR the purpose of *specifying that certain alcohol- or drug-related offenses apply to*
5 *certain vessels; providing that a person who operates or attempts to operate a*
6 *vessel on the waters of the State is deemed to have consented, ~~subject to certain~~*
7 *~~provisions of law,~~ to take a certain test of the person's breath or blood to*
8 *determine alcohol concentration or drug or controlled dangerous substance*
9 *content if the person is detained under certain circumstances; ~~providing~~*
10 *establishing that a person may not be compelled to take a certain test, ~~subject to~~*
11 *~~a certain exception~~ of the person's breath or blood, except under certain*
12 *circumstances; requiring a detaining police officer to advise a person ~~detained~~*
13 *~~under certain circumstances~~ that, if the person refuses to take a certain test, or*
14 *takes the a test and the results indicate a certain alcohol concentration, ~~on~~*
15 *~~conviction of a certain violation~~ with a certain result the court may prohibit the*

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 person from operating ~~or attempting to operate~~ a vessel on the waters of the
 2 State for a certain period of time; authorizing the court to prohibit a certain
 3 person from operating a vessel on the waters of the State for a certain period of
 4 time if the person refuses a certain test or takes a test with a certain result;
 5 requiring a person to submit to certain tests of the person's breath or blood to
 6 determine alcohol concentration or drug or controlled dangerous substance
 7 content if the person is involved in an accident while operating or attempting to
 8 operate a vessel that results in the death of, or life-threatening injury to,
 9 another person and the person is detained by a police officer who has reasonable
 10 grounds to believe that the person has been operating the vessel while under
 11 the influence of alcohol or impaired by alcohol, drugs, a combination of alcohol
 12 and drugs, or a controlled dangerous substance; establishing that certain
 13 provisions relating to the qualifications of a person administering a certain blood
 14 or breath test and the equipment used to administer the test apply under certain
 15 circumstances; providing that medical personnel who perform certain tests are
 16 not liable for civil damages under certain circumstances; providing for the
 17 admissibility of evidence of certain tests or analyses under certain
 18 circumstances; making certain conforming and stylistic changes; and generally
 19 relating to operating a vessel while under the influence of or impaired by
 20 alcohol or drugs.

21 BY renumbering

22 Article – Natural Resources
 23 Section 8–738.1
 24 to be Section 8–738.2
 25 Annotated Code of Maryland
 26 (2007 Replacement Volume and 2009 Supplement)

27 BY repealing and reenacting, with amendments,
 28 Article – Courts and Judicial Proceedings
 29 Section 10–309(a) and (d)
 30 Annotated Code of Maryland
 31 (2006 Replacement Volume and 2009 Supplement)

32 BY repealing and reenacting, with amendments,
 33 Article – Natural Resources
 34 Section 8–738
 35 Annotated Code of Maryland
 36 (2007 Replacement Volume and 2009 Supplement)

37 BY adding to
 38 Article – Natural Resources
 39 Section 8–738.1
 40 Annotated Code of Maryland
 41 (2007 Replacement Volume and 2009 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 2 MARYLAND, That Section(s) 8–738.1 of Article – Natural Resources of the Annotated
 3 Code of Maryland be renumbered to be Section(s) 8–738.2.

4 ~~SECTION 2. AND BE IT FURTHER ENACTED BY THE GENERAL~~
 5 ~~ASSEMBLY OF MARYLAND,~~ That the Laws of Maryland read as follows:

6 **Article – Courts and Judicial Proceedings**

7 10–309.

8 (a) (1) (i) Except as provided in § 16–205.1(c) of the Transportation
 9 Article ~~OR § 8–738(B)(3) 8–738.1 OF THE NATURAL RESOURCES ARTICLE~~, a
 10 person may not be compelled to submit to a test or tests provided for in this subtitle.

11 (ii) Evidence of a test or analysis provided for in this subtitle is
 12 not admissible in a prosecution for a violation of § 16–113 or § 21–902 of the
 13 Transportation Article, § 8–738 of the Natural Resources Article, or Title 2, Subtitle 5,
 14 § 2–209, or § 3–211 of the Criminal Law Article if obtained contrary to the provisions
 15 of this subtitle.

16 (2) The fact of refusal to submit is admissible in evidence at the trial.

17 (d) Nothing in this section precludes or limits admissibility of evidence of a
 18 test or analysis to determine the alcohol concentration of a person’s blood or breath
 19 which is obtained as provided in § 16–205.1(c) of the Transportation Article ~~OR §~~
 20 ~~8–738(B)(3) 8–738.1 OF THE NATURAL RESOURCES ARTICLE.~~

21 **Article – Natural Resources**

22 8–738.

23 (a) ~~A~~ SUBJECT TO SUBSECTION (G) OF THIS SECTION, A person may not
 24 operate or attempt to operate a vessel while the person:

25 (1) Is under the influence of alcohol;

26 (2) Is impaired by alcohol;

27 (3) Is so far impaired by any drug, combination of drugs, or
 28 combination of one or more drugs and alcohol that the person cannot operate a vessel
 29 safely; or

30 (4) Is impaired by any controlled dangerous substance, as defined in §
 31 5–101 of the Criminal Law Article, unless the person is entitled to use the controlled
 32 dangerous substance under the laws of the State.

1 (b) (1) Except as provided under paragraph (2) of this subsection, the
 2 evidentiary presumptions and procedures established under §§ 10-302 through
 3 ~~10-308~~ 10-309 of the Courts Article are applicable to any violation of this section.

4 (2) If at the time of testing an individual has an alcohol concentration
 5 that meets the definition of “under the influence of alcohol per se” in § 11-174.1 of the
 6 Transportation Article, as determined by an analysis of the individual’s blood or
 7 breath, it shall be prima facie evidence that the individual was operating a vessel
 8 while under the influence of alcohol.

9 (3) ~~(I) IF A PERSON IS INVOLVED IN AN ACCIDENT WHILE
 10 OPERATING OR ATTEMPTING TO OPERATE A VESSEL THAT RESULTS IN THE
 11 DEATH OF, OR A LIFE-THREATENING INJURY TO, ANOTHER PERSON AND THE
 12 PERSON IS DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS
 13 TO BELIEVE THAT THE PERSON HAS BEEN OPERATING A VESSEL OR
 14 ATTEMPTING TO OPERATE A VESSEL WHILE UNDER THE INFLUENCE OF
 15 ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY
 16 DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE
 17 DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE A VESSEL
 18 SAFELY, OR WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, THE
 19 PERSON SHALL BE REQUIRED TO SUBMIT, AS DIRECTED BY THE OFFICER, TO A
 20 TEST OF:~~

21 ~~1. THE PERSON’S BREATH TO DETERMINE ALCOHOL
 22 CONCENTRATION;~~

23 ~~2. ONE SPECIMEN OF THE PERSON’S BLOOD TO
 24 DETERMINE ALCOHOL CONCENTRATION OR TO DETERMINE THE DRUG OR
 25 CONTROLLED DANGEROUS SUBSTANCE CONTENT OF THE PERSON’S BLOOD; OR~~

26 ~~3. BOTH THE PERSON’S BREATH UNDER ITEM 1 OF
 27 THIS SUBPARAGRAPH AND ONE SPECIMEN OF THE PERSON’S BLOOD UNDER
 28 ITEM 2 OF THIS SUBPARAGRAPH.~~

29 ~~(II) ANY MEDICAL PERSONNEL WHO PERFORM ANY TEST
 30 REQUIRED BY THIS PARAGRAPH ARE NOT LIABLE FOR ANY CIVIL DAMAGES AS
 31 THE RESULT OF ANY ACT OR OMISSION RELATED TO THE TEST, NOT AMOUNTING
 32 TO GROSS NEGLIGENCE~~ ANY PERSON WHO OPERATES OR ATTEMPTS TO
 33 OPERATE A VESSEL UPON ON THE WATERS OF THE STATE IS DEEMED TO HAVE
 34 CONSENTED, SUBJECT TO THE PROVISIONS OF §§ 10-302 THROUGH 10-309 OF
 35 THE COURTS ARTICLE, TO TAKE A TEST, AS DEFINED IN § 16-205.1 OF THE
 36 TRANSPORTATION ARTICLE, IF THE PERSON IS DETAINED BY A POLICE OFFICER
 37 WHO HAS REASONABLE GROUNDS TO BELIEVE THAT THE PERSON HAS BEEN

1 OPERATING OR ATTEMPTING TO OPERATE A VESSEL WHILE UNDER THE
2 INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR
3 IMPAIRED BY ANY DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF
4 ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE
5 OR ATTEMPT TO OPERATE A *THE* VESSEL SAFELY, OR WHILE IMPAIRED BY A
6 CONTROLLED DANGEROUS SUBSTANCE.

7 (C) (1) EXCEPT AS PROVIDED IN § 8-738.1 OF THIS SUBTITLE, A
8 PERSON MAY NOT BE COMPELLED TO TAKE A TEST, AS DEFINED IN § 16-205.1
9 OF THE TRANSPORTATION ARTICLE.

10 ~~(2) UPON CONVICTION AND IN ADDITION TO ANY OTHER~~
11 ~~PENALTIES, A COURT MAY PROHIBIT A PERSON FROM OPERATING A VESSEL ON~~
12 ~~THE WATERS OF THE STATE FOR A PERIOD OF 1 YEAR IF THE PERSON WAS~~
13 ~~DETAINED BY A POLICE OFFICER WHO HAD REASONABLE GROUNDS TO BELIEVE~~
14 ~~THAT THE PERSON WAS OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF~~
15 ~~ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY~~
16 ~~DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE~~
17 ~~DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE OR ATTEMPT TO~~
18 ~~OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY A CONTROLLED~~
19 ~~DANGEROUS SUBSTANCE AND THE PERSON REFUSED TO TAKE A TEST, OR WAS~~
20 ~~TESTED AND THE RESULT INDICATED AN ALCOHOL CONCENTRATION OF 0.08 OR~~
21 ~~MORE.~~

22 ~~(3) A DETAINING OFFICER WHO HAS REASONABLE GROUNDS TO~~
23 ~~BELIEVE THAT A PERSON WAS OPERATING A VESSEL WHILE UNDER THE~~
24 ~~INFLUENCE OF ALCOHOL, WHILE IMPAIRED BY ALCOHOL, WHILE SO FAR~~
25 ~~IMPAIRED BY ANY DRUG, ANY COMBINATION OF DRUGS, OR A COMBINATION OF~~
26 ~~ONE OR MORE DRUGS AND ALCOHOL THAT THE PERSON COULD NOT OPERATE~~
27 ~~OR ATTEMPT TO OPERATE A VESSEL SAFELY, OR WHILE IMPAIRED BY A~~
28 ~~CONTROLLED DANGEROUS SUBSTANCE SHALL ADVISE THE PERSON OF THE~~
29 ~~SANCTIONS THAT MAY BE IMPOSED BY A COURT IF THE PERSON REFUSES TO~~
30 ~~TAKE A TEST OR TAKES A TEST AND THE RESULT INDICATES AN ALCOHOL~~
31 ~~CONCENTRATION OF 0.08 OR MORE.~~

32 (2) *THE DETAINING POLICE OFFICER SHALL ADVISE A PERSON*
33 *WHO IS REQUESTED TO TAKE A TEST THAT, ON RECEIPT OF A SWORN STATEMENT*
34 *FROM THE OFFICER THAT THE PERSON WAS REQUESTED TO TAKE A TEST AND*
35 *REFUSED OR WAS TESTED AND THE RESULT INDICATED AN ALCOHOL*
36 *CONCENTRATION OF 0.08 OR MORE, THE COURT MAY, ON CONVICTION AND IN*
37 *ADDITION TO OTHER PENALTIES, PROHIBIT THE PERSON FROM OPERATING A*
38 *VESSEL ON THE WATERS OF THE STATE FOR UP TO 1 YEAR.*

1 ~~(D)~~ (D) It is not a defense to a charge of violating subsection (a)(3) of this section
 2 that the person charged is or was entitled under the laws of this State to use the drug,
 3 combination of drugs, or combination of [1] ONE or more drugs and alcohol, unless the
 4 person was unaware that the drug or combination would make the person incapable of
 5 safely operating a vessel.

6 ~~(E)~~ (E) (1) Notwithstanding any other provision of this title, a person who
 7 violates [paragraph (1) of] subsection (a)(1) of this section is guilty of a misdemeanor
 8 and upon conviction:

9 (i) For a first offense, shall be subject to a fine of not more than
 10 \$1,000 or imprisonment for not more than 1 year or both;

11 (ii) For a second offense, shall be subject to a fine of not more
 12 than \$2,000 or imprisonment for not more than 2 years or both; and

13 (iii) For a third or subsequent offense, shall be subject to a fine of
 14 not more than \$3,000 or imprisonment for not more than 3 years or both.

15 (2) Notwithstanding any other provision of this title, a person who
 16 violates [paragraph (2), (3), or (4) of] subsection (a)(2), (3), OR (4) of this section is
 17 guilty of a misdemeanor and upon conviction:

18 (i) For a first offense, shall be subject to a fine of not more than
 19 \$500 or imprisonment for not more than 2 months or both; and

20 (ii) For a second or subsequent offense, shall be subject to a fine
 21 of not more than \$1,000 or imprisonment of not more than 1 year or both.

22 **(3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE,**
 23 **THE COURT MAY PROHIBIT A PERSON CONVICTED OF A VIOLATION OF**
 24 **SUBSECTION (A)(1) OF THIS SECTION FROM OPERATING A VESSEL ON THE**
 25 **WATERS OF THE STATE FOR UP TO 1 YEAR IF THE PERSON:**

26 **(I) REFUSED TO TAKE A TEST, AS DEFINED IN § 16-205.1 OF**
 27 **THE TRANSPORTATION ARTICLE, WHEN REQUESTED BY A POLICE OFFICER**
 28 **UNDER SUBSECTION (B)(3) OF THIS SECTION; OR**

29 **(II) WAS TESTED AND THE RESULT INDICATED AN ALCOHOL**
 30 **CONCENTRATION OF 0.08 OR MORE.**

31 ~~(F)~~ (F) If a person is charged with a violation of this section, the court may find
 32 the person guilty of any lesser included offense under any subsection of this section.

33 **(G) THIS SECTION APPLIES TO THE FOLLOWING:**

1 (1) A VESSEL REQUIRED TO BE REGISTERED WITH THE
 2 DEPARTMENT UNDER THIS SUBTITLE;

3 (2) A VESSEL REQUIRED TO HAVE A VALID NUMBER AWARDED IN
 4 ACCORDANCE WITH A FEDERAL LAW OR A FEDERALLY APPROVED NUMBERING
 5 SYSTEM OF ANOTHER STATE; AND

6 (3) A VESSEL FROM A FOREIGN COUNTRY USING THE WATERS OF
 7 THIS STATE.

8 8-738.1.

9 (A) IF A PERSON IS INVOLVED IN AN ACCIDENT WHILE OPERATING OR
 10 ATTEMPTING TO OPERATE A VESSEL THAT RESULTS IN THE DEATH OF, OR A
 11 LIFE-THREATENING INJURY TO, ANOTHER PERSON AND THE PERSON IS
 12 DETAINED BY A POLICE OFFICER WHO HAS REASONABLE GROUNDS TO BELIEVE
 13 THAT THE PERSON ~~WAS~~ HAS BEEN OPERATING ~~THE~~ A VESSEL OR ATTEMPTING
 14 TO OPERATE ~~THE~~ A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL, WHILE
 15 IMPAIRED BY ALCOHOL, WHILE SO FAR IMPAIRED BY ANY DRUG, ANY
 16 COMBINATION OF DRUGS, OR A COMBINATION OF ONE OR MORE DRUGS AND
 17 ALCOHOL THAT THE PERSON COULD NOT OPERATE ~~THE~~ A VESSEL SAFELY, OR
 18 WHILE IMPAIRED BY A CONTROLLED DANGEROUS SUBSTANCE, THE PERSON
 19 SHALL BE REQUIRED TO SUBMIT, AS DIRECTED BY THE POLICE OFFICER, TO A
 20 TEST OF:

21 (1) THE PERSON'S BREATH TO DETERMINE ALCOHOL
 22 CONCENTRATION;

23 (2) ONE SPECIMEN OF THE PERSON'S BLOOD TO DETERMINE
 24 ALCOHOL CONCENTRATION OR TO DETERMINE THE DRUG OR CONTROLLED
 25 DANGEROUS SUBSTANCE CONTENT OF THE PERSON'S BLOOD; OR

26 (3) BOTH THE PERSON'S BREATH UNDER ITEM (1) OF THIS
 27 SUBSECTION AND ONE SPECIMEN OF THE PERSON'S BLOOD UNDER ITEM (2) OF
 28 THIS SUBSECTION.

29 (B) IF A POLICE OFFICER DIRECTS THAT A PERSON BE TESTED, THEN
 30 THE PROVISIONS OF § 10-304 OF THE COURTS ARTICLE ~~SHALL~~ APPLY.

31 (C) ANY MEDICAL PERSONNEL WHO PERFORM ANY TEST REQUIRED BY
 32 THIS SECTION ARE NOT LIABLE FOR ANY CIVIL DAMAGES AS A RESULT OF ANY
 33 ACT OR OMISSION RELATED TO ~~SUCH TESTS~~ THE TEST, NOT AMOUNTING TO
 34 GROSS NEGLIGENCE.

1 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
2 effect October 1, 2010.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.